IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

ST.Rev.No. 229 of 2005()

TA.611/2003 OF THE KERALA SALES TAX APPELLATE TRIBUNAL,ADDL.BENCH,PALAKKAD
.....

REVISION PETITIONER/APPELLANT/ASSESSEE

P.T.GEORGE,
SOUTHERN SUPARI CO.,
PAZHANJI, KUNNAMKULAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT/RESPONDENT/REVENUE:

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.V.V.ASHOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

S.T.Rev.No.229 of 2005

Dated, this the 31st day of May, 2007

ORDER

H.L.Dattu, C.J.

This revision petition is filed by an assessee being aggrieved by the orders passed by the Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A.No.611 of 2003 dated 5.12.2003. By the impugned order the Tribunal has confirmed the suo motu orders passed by the Deputy Commissioner, Commercial Taxes, Thrissur dated 24.6.2003.

2. The brief facts are: The assessee is a registered dealer both under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act. He deals in Arecanut. His vehicle was intercepted by the Intelligence Officer, Commercial Taxes, Wadakkancherry on 16.7.1998. After such interception of the vehicle, the Inspecting Assistant Commissioner (Intelligence), Thrissur was of the view that the assessee was not carrying the proper documents as required under sub-section (2) of Section 29 of the Kerala General Sales Tax Act and levied a penalty of Rs.33,600/-. Being aggrieved by the said order the assessee had carried the matter by way of first appeal before the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam. The said authority by order dated 21.12.2004 has set aside the penalty orders passed by the Inspecting Assistant Commissioner (Intelligence), Thrissur dated 24.12.2001.

3. Meanwhile, the Deputy Commissioner of Commercial Taxes, Thrissur relying upon the report of the Intelligence Officer had suo motu reopened the assessment order which had been completed by the assessing authority for the assessment year 1998-99 and thereafter remanded the matter to the assessing authority to redo the matter in accordance with law keeping in view certain observations made by him in the course of

the order. Aggrieved by that order the petitioner had carried the matter in appeal before the Tribunal in T.A.No.611 of 2003. The Tribunal by its order dated 5th December, 2003 has confirmed the suo motu orders passed by the Deputy Commissioner of Commercial Taxes, Thrissur. Aggrieved by the said order of the Tribunal, the assessee is before us in this revision petition.

4. The learned counsel appearing for the assessee would contend that the orders passed by the Tribunal requires to be set aside by this Court in view of the orders passed by the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam dated 21.12.2004. In support of his contention learned counsel has taken us through the orders passed by the Tribunal as well as the Deputy Commissioner, Commercial Taxes, Thrissur.

5. Sri.V.V.Ashokan, learned Special Government Pleader (Taxes) appearing for the Revenue, sought to justify the impugned orders passed by the Tribunal.

6. The facts are not in dispute. Based on the report of the Intelligence Officer of the department, the Deputy Commissioner of Commercial Taxes, Thrissur had initiated suo motu proceedings for the assessment year 1998-99. After detailed deliberation he thought it fit that the orders passed by the assessing authority for the said assessment year requires to be redone by the assessing authority and therefore, he set aside the order of assessment passed for the assessment year 1998-99 and remanded the matter to the assessing authority to redo the matter in accordance with law.

7. The order passed by the Inspecting Assistant Commissioner (Intelligence) Thrissur dated 24.12.2001 was the subject matter of appeal before the first appellate authority in STA No.404 of 2003. The appellate authority has set aside the order passed by the Inspecting Assistant Commissioner (Intelligence), Thrissur.

8. Suo motu proceedings were initiated by the Deputy Commissioner of Commercial Taxes, Thrissur primarily based on the report of the Intelligence wing of the department. That order of the Intelligence wing of the department has now been set aside by the first appellate authority. The basis and the foundation for the Deputy Commissioner to initiate proceedings and to revive the order of the assessing authority for the assessment year 1998-99 was the report of the Intelligence wing of the department and that report has now been set aside by the first appellate authority. In that view of the matter, in our opinion, the orders passed by the Deputy Commissioner of Commercial Taxes, Thrissur in exercise of his suo motu powers could not have been confirmed by the Tribunal. Now, since the order of the Intelligence wing of the department has been set aside by the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam, there is no basis for the Deputy Commissioner of Commercial Taxes, Thrissur to initiate suo motu proceedings. In that view of the matter, the order passed by the Tribunal requires to be set aside. Accordingly, the following:

Order

i) The revision petition is allowed.

ii) The order passed by the Tribunal in T.A.No.611 of 2003 is set aside.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

vns